In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1259

SAMUEL FIORE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a jury trial in the United States District Court for the District of Massachusetts, petitioner was convicted of two counts of knowingly using extortionate means to attempt to collect extensions of credit, in violation of 18 U.S.C. (Supp. V) 894(a). He was sentenced to three years' imprisonment and a $5,500 fine. The court of appeals affirmed on December 4, 1970 (Pet. App. B), rejecting petitioner's contentions that the statute was beyond the power of Congress under the Commerce and Bankruptcy

Clauses of the Constitution. The petition for a writ of certiorari, filed on January 20, 1971, is out of time under Rule 22(2) of this Court's Rules.

The question whether enactment of Section 894(a) was within the power of Congress presently is pending before this Court in *Perez* v. *United States*, No. 600, this Term, certiorari granted, November 16, 1970.[1] Accordingly, should the Court be disposed to reach the merits despite the untimeliness of the petition, it may wish to defer disposition of this case until after decision of *Perez*.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1971.

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[1] See also *Destefano* v. *United States*, No. 715, this Term; *Delutro* v. *United States*, No. 1234, this Term.

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